

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-7468

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

GAYLE MCQUOID HOLLEY, individually  
and on behalf of JAMES MCQUOID,  
NORMAN MCQUOID, THOMAS MCQUOID,  
DOUGLAS MCQUOID, MICHAEL MCQUOID, and  
ADELAINE MCQUOID, her minor children,

Plaintiff-Appellant,

-vs-

ABE LAVINE, AS Commissioner of the  
New York State Department of Social  
Services, and JAMES REED, as  
Commissioner of the Monroe County  
Department of Social Services,

Defendants-Appellees.

ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

APPENDIX

K. WADE EATON, ESQ.  
Greater Up-State Law Project  
80 West Main Street  
Rochester, New York 14614  
Tel: 716-454-6500  
Attorney for Plaintiff-Appellant



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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GAYLE MCQUOID HOLLEY, individually  
and on behalf of JAMES MCQUOID,  
NORMAN MCQUOID, THOMAS MCQUOID,  
DOUGLAS MCQUOID, MICHAEL MCQUOID, and  
ADELAINE MCQUOID, her minor children,

Plaintiff-Appellant,

-vs-

ABE LAVINE, AS Commissioner of the  
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Attorney for Plaintiff-Appellant

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PLAINTIFFS

HOLLEY, Gayle McQuoid, Individually  
and on behalf of  
McQUOID, James  
McQuoid, Norman  
McQuoid, Thomas  
McQuoid, Douglas  
McQuoid, Michael  
McQuoid, Adelaine, her minor children

DEFENDANTS

LAVINE, Abe, as Commissioner of  
the New York State Department  
of Social Services  
REED, James, as Commissioner  
of the Monroe County  
Department of Social Services

CAUSE 42 U.S.C. Sect. 1983. Action  
challenges validity of Sec. 131-k of N.Y.S  
Social Services Law which deprives aliens  
residing in the U.S., under color of law,  
of their rights to public assistance.

rah

ATTORNEYS

Margaret M. Mahoney, Atty.  
Monroe County Legal Assistance  
Greater Up-State Law Project  
80 West Main Street  
Rochester, New York 14614  
716-325-2520

Charles G. Porreca, Esq.  
111 Westfall Road  
Rochester, New York 14620

Louis J. Lefkowitz, Atty. Gen.  
Paul O. Harrison, Asst. Atty. Gen.  
300 Terminal Building  
65 Broad Street  
Rochester, New York 14614

Appeal: K. Wade Eaton, Esq.

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
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				JS-5	
				JS-6	

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DATE	NR.	PROCEEDINGS
1975		
Apr. 17		Filed complaint & order to show cause why an order should not be issued granting preliminary injunction, convening a 3-judge court etc. ret. 4-28-75, service by other than U.S. Mar. permitted-Burke, DJ(filed in Roch. by Judge Burke) F-163
17		JS 5 made
28		Filed Deft., Reed, affidavit, notice of motion & motion to dismiss ret. at Roch. 4-28-75.
28		Filed Deft., Lavine, notice of motion & motion to dismiss ret. at Roch. 4-28-75.
28		Filed Deft., Lavine, affidavit opposing preliminary injunction.
28		Order to show cause for preliminary injunction, etc. Motion by deft., Lavine, to dismiss., Motion by deft., Reed to dismiss To be submitted 2 wks. from today.
May 31		Filed decision and order dismissing the action for lack of jurisdiction over subject matter and because the complaint fails to state a claim upon which relief may be granted-Burke, DJ Notice & copies to Margaret M. Mahoney & K.Wade Eaton, Paul O. Harrison and Charles G. Porreca F-166
31		Filed judgment dismissing the action for lack of jurisdiction etc.-Clerk Notice & copies to Margaret M. Mahoney, K.Wade Eaton, Paul O. Harrison and Charles G. Porreca F-166
31		JS 6 made
Aug. 8		Filed Pltfs'. Notice of Appeal (copy mailed to Mr. Lefkowitz, Roch., Mr. Porreca and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Eaton)



GAYLE MCQUOID HOLLEY, individually and on behalf of JAMES MCQUOID, NORMAN MCQUOID, THOMAS MCQUOID, DOUGLAS MCQUOID, MICHAEL MCQUOID, and ADELAINE MCQUOID, her minor children,

-against-

Defendants.

Civil Action No. 25-151

3. Convening a 3-judge Court.

It is ORDERED that service of copies of this Order to Show Cause, Summons and Complaint made by Margaret M. Mahoney, Esq. and K. Wade Eaton, Esq. pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. section 1391 (e) as follows shall be deemed sufficient:

a) Upon the defendant Abe Lavine by delivering a copy on or before 5:00 P.M. on the 17 day of April, 1975, to a person authorized to receive service for the defendant at the office of the New York State Department of Social Services located at 36 West Main Street, Rochester, New York; and by delivering a copy to an assistant attorney general at the office of the New York State Attorney General, 65 Broad Street, Rochester, New York, on or before 5:00 P.M. on the 17 day of April, 1975.

b) Upon the defendant James Reed by delivering a copy on or before 5:00 P.M. on the 17 day of April, 1975, to defendant Reed or an attorney for Monroe County Department of Social Services.

Issued at Rochester, New York

Date: Apr 17 1975

121 Edward P. Burke  
United States District Judge



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually and  
on behalf of JAMES MCQUOID, NORMAN  
MCQUOID, THOMAS MCQUOID, DOUGLAS  
MCQUOID, MICHAEL MCQUOID and  
ADELAINE MCQUOID, her minor children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the New  
York State Department of Social Services;  
and JAMES REED, as Commissioner of the  
Monroe County Department of Social  
Services,

Defendants.

AFFIDAVIT

COUNTY OF MONROE )  
STATE OF NEW YORK) s.s.:

GAYLE MCQUOID HOLLEY, being duly sworn, deposes and  
says:

1. That she is a plaintiff in the above entitled  
action; that the other six (6) plaintiffs are her minor dependent  
children.

2. That a copy of the Complaint in this action is  
attached hereto; that deponent has read the Complaint and knows  
the contents thereof; that the same is true to deponent's own  
knowledge, except as to matters therein stated to be alleged on  
information and belief, and that as to those matters deponent  
believes it to be true.

3. That the income of deponent and her six (6)  
children is derived solely from public assistance benefits under  
the New York State Aid to Dependent Children Program.

4. That the deponent and her children have no savings  
and no other assets of any kind, other than household articles,  
clothing and furniture.

5. That the monthly public assistance budget for the seven (7) member household of the plaintiffs has been computed by the Monroe County Department of Social Services to be \$644.00.

6. That since January 15, 1975 the monthly budget of \$644.00 has been reduced by one seventh (\$91.99) to \$552.01, pursuant to the decision of the defendant Abe Lavine, challenged in this action, to remove the deponent from the grant. [A copy of the pertinent parts of the Budget Worksheet, reflecting the reduction, is attached hereto as Exhibit 1]

7. That the plaintiffs' monthly expenses for housing and utilities include \$190.00 for rent, approximately \$60.00 for oil for heat, approximately \$25.00 for gas and electric, and \$12.50 for telephone service, a total of \$287.50.

8. That the amount of the reduced grant remaining after payment of housing and utility expenses is \$264.51 per month; that this amount is insufficient to purchase food, clothing and all of the necessities of life for the seven (7) plaintiffs.

9. That unless the defendants are enjoined and restrained during the pendency of this action from requiring the seven (7) plaintiffs to live at the public assistance level for six (6) persons, the plaintiffs will suffer great and irreparable damage in that they will have income insufficient to purchase food, clothing and the necessities of life.

*Gayle McQuoid Holley*  
GAYLE MCQUOID HOLLEY

Sworn to before me this

7<sup>th</sup> day of April, 1975.  
*Sharon Truesdell*  
SHARON TRUESDELL  
Notary Public, State of N. Y., Monroe County  
No. 4517304  
Commission Expires March 30, 1976



## BUDGET WORKSHEET - PART 1 - PUBLIC ASSISTANCE

DEPARTMENT OF SOCIAL SERVICES

CASE NAME		CASE ADDRESS (Mailing)		Program	CASE NUMBER	No. in Household		Ethnic
						PA	FS	
John Kelly, Jr. & Margaret Kelly		45 Wilcox St.		ARC	85855	6		
Margaret Kelly				SS		1		
J. Wayne Kelly				SS	235151	1		
LIVING ARRANGEMENTS	SHelter <input type="checkbox"/> Own Home <input type="checkbox"/> Rent <input type="checkbox"/> (Includes Heat) <input type="checkbox"/> (Includes Utilities)	FUEL PERIOD: <input type="checkbox"/> 8 Months <input type="checkbox"/> 12 Months <input type="checkbox"/> Restaurant Allowance						
INDICATE ANY ITEMS CHANGED FROM PRIOR AUTHORIZATION:				CHECK IF APPLICABLE		COUPON ISSUANCE CYCLE		
1. D. Case No.				7. Total Coupons		<input type="checkbox"/> Meal-on-wheels		<input type="checkbox"/> Monthly
2. Head of Household				8. Cycle Issuance		<input type="checkbox"/> Self-employed		<input type="checkbox"/> Semi-Monthly
3. Address				9. Other (Explain Below)				
SECTION A - NEEDS				SECTION D - EARNED INCOME				
ITEM OF NEED	Allowance	ARC	SS	FS	EXPLANATION	WAGE EARNER'S PLANS	F.S. PROGRAM	
1. Allowance	45 ÷ 7	358.29	57.71		1. Gross Monthly Income			
2. Shelter*	162 ÷ 7	138.86	23.14		2. Exemptions*			
3. Fuel for Heating	64 ÷ 7	54.86	9.14		3. Non-pensional work expenses a. Union dues			
4a. Utilities					b. Tools, licenses, etc.			
b. Telephone					4. Personal work expenses a. Federal Income Tax			
c. Water					b. State Income Tax			
d. Sewer					c. Social Security Tax			
5. Restaurant Allowance					d. NYS Disability Insurance			
6. Room and Board					e. Transportation			
7. Training					f. Lunch			
8. Other					Health insurance Premium, etc. (Must exceed \$10 for Food Stamps)			
9. SUBTOTAL BY PROGRAM		552.01	91.99		h. Other (specify) (Child Care, Training, etc.)			
PURCHASE REQUIREMENTS					i. Other (specify) (NYC Income Tax)			
0. Homemaker					Count ordered support payments (as verified)			
1. Housekeeper Service					TOTAL DEDUCTIONS (add lines 2 thru 5)			
2. Child Care					7. NET APPLICABLE INCOME (1 minus 6)			
3. Other (specify)					SECTION E - OTHER INCOME			
4. Other (specify)					Distribution by Program			
5. TOTAL NEEDS (Sum of items 1-14)		552.01			Name	IC	Total Amount	
					MIN	Minus Amount	Net	

IRRELEVANT PARTS OMITTED

"ΕΚΗΙΒΠ Ι"

SUPERVISOR'S SIGNATURE

DATE SIG 10

☐ Certification  
☐ Recertification

☐ Discontinuance  
☐ Disapproval

☐ Disapproval

CLIENT COPY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually  
and on behalf of JAMES MCQUOID,  
NORMAN MCQUOID, THOMAS MCQUOID,  
DOUGLAS MCQUOID, MICHAEL MCQUOID, and  
ADELAINE MCQUOID, her minor children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the  
New York State Department of Social  
Services, and JAMES REED, as  
Commissioner of the Monroe County  
Department of Social Services,

Defendants.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon  
Margaret M. Mahoney, Esq. , 80 West Main Street, Rochester,  
New York 14614, attorney for plaintiffs, an answer to the  
Complaint which is herewith served upon you, within twenty (20)  
days after service of this summons upon you, inclusive of the  
day of service. If you fail to do so, judgment by default will  
be taken against you for the relief demanded in the complaint.

DATED: April 12, 1925

JOHN K. ADAMS

CLERK OF THE COURT



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually and on  
behalf of JAMES MCQUOID, NORMAN MCQUOID,  
THOMAS MCQUOID, DOUGLAS MCQUOID,  
MICHAEL MCQUOID and ADELAINE MCQUOID, her  
minor children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the  
New York State Department of Social  
Services, and JAMES REED, as Commissioner  
of the Monroe County Department of Social  
Services,

Defendants.

COMPLAINT

THREE JUDGE

COURT

Civil Action

No. 25-151

I.

PRELIMINARY STATEMENT

1. This action challenges the validity of section 131-k of the New York State Social Services Law and the regulation of the New York State Department of Social Services promulgated thereunder, section 349.3 of Title 18 of the New York Code of Rules and Regulations which, as enacted and applied by the defendants, operate to deprive aliens residing in the United States under color law, and their families, of their right to public assistance under the New York State program of Aid to Dependent Children.

2. Section 131-k (1) of the New York State Social Services Law, as enacted and applied by defendants, operates to deprive plaintiffs of rights secured by the Fourteenth Amendment to the Constitution of the United States, the Civil Rights Act of 1871, 42 U.S.C. §1983, the Social Security Act, 42 U.S.C. §301, et seq. and regulations promulgated thereunder.

II.

JURISDICTION

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §1343, and by 28 U.S.C. §1331, as the matter in controversy exceeds \$10,000.00 and arises under the Constitution and laws of the United States.

III.

PLAINTIFFS

4. The plaintiff Gayle McQuoid Holley is a citizen of Canada. She has been a resident of the United States since 1954. She presently resides in Monroe County, New York.

5. The plaintiffs James McQuoid, age 14, Norman McQuoid, age 13, Thomas McQuoid, age 12, Douglas McQuoid, age 11, Michael McQuoid, age 9, and Adelaine McQuoid, age 1, are the children of the plaintiff Gayle McQuoid, citizens of the United States by birth, presently residing with the plaintiff Gayle McQuoid Holley, in Monroe County, New York.

IV.

DEFENDANTS

6. The defendant Abe Lavine is the Commissioner of the Department of Social Services of the State of New York. He is chief administrator of that department and is responsible for exercising general supervision over the work of all local social service officials in New York, pursuant to section 34 of the New York State Social Services Law.

7. The defendant James Reed is the Commissioner of the Department of Social Services of Monroe County, New York. He is responsible for the general supervision of that department, pursuant to section 65 of the New York State Social Services Law.



V.

STATEMENT OF FACTS

8. The plaintiff Gayle McQuoid Holley was born in Ontario, Canada on August 22, 1942. She first entered the United States in 1954, as a nonimmigrant student. She resided in the state of Vermont from 1954 until 1958. In 1958 she returned to Canada for a period of approximately three months, and then reentered the United States. She has resided continuously in the state of New York since 1958.

9. The Immigration and Naturalization Service (hereinafter, the Service) has knowledge of the residence of the plaintiff Gayle McQuoid Holley in the United States. The Service has classified her as a deportable alien, pursuant to the provisions of the Immigration and Naturalization Act. The Service, in its discretion, has determined not to deport her, for humanitarian reasons, so long as her citizen children remain dependent upon her. [See Exhibit "A", attached hereto.]

10. In 1970, the plaintiff Gayle McQuoid Holley applied to the Immigration and Naturalization Service for status as an immigrant alien. Her application was denied on the ground that she was a public assistance recipient; and pursuant to the provisions of the Immigration and Naturalization Act, a person receiving public assistance is ineligible for immigrant status.

11. Since 1968 the plaintiff Gayle McQuoid Holley has been the recipient of a public assistance grant of Aid to Dependent Children on behalf of herself and her minor children, pursuant to Title 10 of Article 5 of the New York State Social Services Law.

12. The New York State legislature enacted section 131-k of the Social Services Law, effective June 7, 1974, which provides that any person who is an alien unlawfully residing in the United States shall be ineligible for public assistance in the aid to dependent children category.

13. The New York State Department of Social Services promulgated section 349.3 of Chapter II of Title 18 of the New York Code of Rules and Regulations, and released Administrative Letter 74 ADM-110, effective August 1, 1974, directing local social services agencies to implement section 131-k of the Social Services Law.

14. On August 20, 1974, the Monroe County Department of Social Services mailed to the plaintiff Gayle McQuoid Holley a notice of intent to reduce the public assistance grant for the seven (7) plaintiffs by the amount allocated to meet the needs of the plaintiff Gayle McQuoid Holley, for the reason that the plaintiff's alien status made her ineligible for public assistance. This proposed reduction would result in a loss of \$3.33 per month to the McQuoid family household. [A copy of the Notice of Intent is attached hereto as Exhibit "B".]

15. The plaintiff Gayle McQuoid Holley promptly requested that an administrative fair hearing be held by the New York State Department of Social Services to review the determination of the Monroe County Department of Social Services to reduce the plaintiffs' public assistance grant.

16. A fair hearing was scheduled by the New York State Department of Social Services to be held on September 24, 1974 and was adjourned, at the request of the Monroe County Department of Social Services, until October 22, 1974.



17. Since the request for a fair hearing was timely made by the plaintiff Gayle McQuoid Holley, the public assistance grant continued unchanged pending the outcome of the fair hearing.

18. A fair hearing was held on October 22, 1974 at Rochester, New York, before a hearing officer employed by the New York State Department of Social Services.

19. The defendant Abe Lavine rendered a fair hearing decision on December 19, 1974, affirming the determination of the Monroe County Department of Social Services to reduce the monthly public assistance grant of the seven (7) plaintiffs by removing the plaintiff Gayle McQuoid Holley from the grant, because she is an alien unlawfully residing in the United States. [A copy of the fair hearing decision is attached hereto as Exhibit "C"]

20. The Monroe County Department of Social Services has implemented the fair hearing decision of the defendant Lavine by reducing the public assistance grant of the McQuoid household by the amount of \$91.99 per month, which is one seventh of the seven member household grant, effective January 15, 1975.

21. Since January 15, 1975, the seven (7) plaintiff members of the McQuoid household have been required to live on a budget that is only six sevenths of the amount determined by the New York State legislature to be the public assistance level for a family of seven (7).

22. On February 25, 1975 the plaintiff Gayle McQuoid Holley married Wayne Holley, a resident of Monroe County, New York. The marriage has no effect upon the eligibility of the seven (7) plaintiffs for public assistance since Wayne Holley, the recipient of a separate public assistance grant for which eligibility is based on disability, is unable to contribute and does not in fact contribute to the support of Gayle McQuoid Holley or her six (6) minor children.

VI.

FIRST CAUSE OF ACTION

23. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-22.

24. The Social Security Act, 42 U.S.C. §301 et seq. is the federal statutory authority governing the New York State program of Aid to Dependent Children. Section 401 of the Social Security Act, 42 U.S.C. §501 provides:

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.  
(Emphasis added.)

Section 402 (a) (10) of the Social Security Act, 42 U.S.C. §502

(a) (10) provides in pertinent part:

A State plan for aid and services to needy families with children must... provide... that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals.



Section 406 (b) (1) of the Social Security Act, 42 U.S.C. §606

(b) (1) provides in pertinent part:

The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living....

25. Since New York State receives federal support for its program of Aid to Dependent Children, the state plan for distribution of the federal funds must conform with, and must include for eligibility all persons defined as eligible under federal law.

26. The plaintiff Gayle McQuoid Holley is the parent with whom six needy dependent children reside, and so the needs of Ms. Holley must be provided for by the State pursuant to sections 401, 402 (a) (10) and 406 (b) (1) of the Social Security Act.

27. Section 131-k of the New York State Social Services Law, as enacted and applied by defendants, operates to reduce the McQuoid household public assistance grant by the amount of the needs of the parent member Gayle McQuoid Holley.

28. Section 131-k of the New York State Social Services Law, as enacted and applied by defendants, is invalid in that it is inconsistent with, and operates to defeat the purposes of, the Social Security Act.

#### VII.

#### SECOND CAUSE OF ACTION

29. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-28.

30. The regulations promulgated by the Department of Health Education and Welfare to implement the provisions of the Social Security Act, 45 C.F.R. §3.1 et seq., are the federal regulatory authority governing the program of Aid to Dependent Children in New York.

31. 45 C.F.R. §233.50, effective January 1, 1974, provides that every state plan for Aid to Dependent Children shall include for eligibility the following persons:

An otherwise eligible individual who is a resident of the United States but only if he is either (a) a citizen or (b) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203 (a) (7) or section 212 (d) (5) of the Immigration and Nationality Act).

32. The plaintiff Gayle McQuoid Holley is permanently residing in the United States under color of law, and so is eligible for public assistance pursuant to federal eligibility standards.

33. Section 131-k of the New York State Social Services Law, as enacted and applied by the defendants is invalid in that it is inconsistent with, and operates to exclude from eligibility for public assistance persons defined as eligible under, the controlling federal regulatory authority.

#### VIII.

#### THIRD CAUSE OF ACTION

34. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-33 .



35. The Fourteenth Amendment to the Constitution of the United States provides that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

36. Section 131-k, of the New York State Social Services Law, as enacted and applied by the defendants, deprives the plaintiffs of their rights to equal protection and due process of law. As a result, plaintiffs are denied rights secured by the Fourteenth Amendment to the Constitution of the United States.

#### IX.

#### FOURTH CAUSE OF ACTION

37. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-36.

38. The Civil Rights Act of 1871, 42 U.S.C. §1983, provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

39. Section 131-k of the New York State Social Services Law, as enacted and applied by defendants, under color of state law, deprives plaintiffs of rights secured by the Constitution and laws of the United States. Accordingly, plaintiffs are being denied rights secured by the Civil Rights Act of 1871, 42 U.S.C. §1983.

WHEREFORE, plaintiffs respectfully request that this Court:

1. Declare that section 131-k, as enacted and applied by the defendants, is invalid in that it is inconsistent with federal laws and regulations, and violates rights secured to the plaintiffs by the Constitution and laws of the United States.

2. Issue a temporary restraining order, preliminary injunction, and permanent injunction restraining defendants from enforcement of section 131-k of the New York State Social Services Law.

3. Convene a Three-Judge Court, pursuant to the Three Judge Court Act, 28 U.S.C. §2281, et seq., to hear and determine plaintiffs' constitutional challenge to section 131-k of the New York State Social Services Law.

4. Grant to plaintiffs damages in the amount of public assistance benefits denied to them as a result of the operation of section 131-k of the New York State Social Services Law.

5. Allow plaintiffs their costs, disbursements, attorney fees, and such other relief as the Court may deem equitable, just and proper.

Dated: April 17, 1975

*Margaret M. Mahoney*  
MARGARET M. MAHONEY, ESQ.

*K. Wade Eaton*  
K. WADE EATON, ESQ.

Greater Up State Law Project  
Monroe County Legal Assistance  
Corporation  
80 West Main Street  
Rochester, New York 14614  
Tel: (716) 454-6500

Attorneys for Plaintiffs



UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
UNITED STATES COURT HOUSE  
Buffalo, New York - 14202

PLEASE REFER TO THIS FILE NUMBER

A10 370 151(DD)

Phone: 842-3603

October 16, 1974

Lawrence F. Tranello, LLB  
Chief Legal Counsel  
County of Monroe  
Department of Social Services  
111 Westfall Road  
Rochester, N.Y. 14620

Dear Mr. Tranello:

Reference is made to your letter of September 18, 1974, concerning Gayle McQuoid, alien registration number A10 370 151.

The records of this Service indicate Mrs. McQuoid, formerly Miss Dianne Gayle Rivers, was born in Smith Falls, Ontario, Canada, on August 22, 1942. She first entered the United States as a nonimmigrant student on June 30, 1958. Her last entry was apparently on January 2, 1969, at which time she falsely claimed to be a returning lawful permanent resident of the United States.

On September 6, 1959, she married Norman Stanley McQuoid. Five children, natives and citizens of the United States, were born of this marriage. She has allegedly been separated from Mr. McQuoid since August of 1966. It is my understanding that subsequently she gave birth to a sixth child, father not known.

Although Mrs. McQuoid is illegally in the United States, deportation proceedings have not been instituted against her for humanitarian reasons relating to her six United States citizen children. So long as she is receiving public assistance, she is ineligible for an immigrant visa, for which she might otherwise be eligible.

This Service does not contemplate enforcing her departure from the United States at this time. Should the dependency of the children change, her case would be reviewed for possible action consistent with circumstances then existing.

If I may be of further assistance, please advise.

Very truly yours,

*Glenn A. Bertness*  
GLENN A. BERTNESS  
District Director

EXHIBIT "A"

MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES

File # 44-4000

File # 44-4000

44-4000

Notice Of Intent To: ☒ Reduce ☐ Discontinue ☐ Suspend ☒ Public Assistance ☐ Medical Assistance Authorization

To Ms. Mary McDavid  
91 Park St.  
Rochester N.Y.

Case Number 85855

Category Adc

Date August 20, 1974

"Please disregard previous notice"

This is to advise you that this department intends to:

☒ Reduce From 513.93 to 463.50  
☐ Discontinue  
☐ Suspend

your ☒ Public Assistance Grant ☐ Medical Assistance Authorization on September 19 for the following reason(s):

*your alien status has deemed you to be ineligible for public assistance. You will be removed from the case and your pro-rated share of the grant will be withheld. If your family will continue to receive their pro-rated share of the grant.*

\*It is important for you to note that even though the medicaid card in your possession has an expiration date the end of the month, you are not eligible to use this card beyond                     . Use of your medicaid card beyond this date is illegal and prohibited.

☐ Bulletin Reference cited above  
☒ Bulletin Reference see number 13 on reverse side

You may have a conference at this department to review your case at any time before the proposed date of the action noted above.

J. L. Larrabee  
Signed

8/20/74  
Date

Right To A Fair Hearing

If you believe that this action should not be taken, you may request a state fair hearing by telephoning 454-4272 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of the hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why the action should not be taken as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date the action is proposed to be taken, you will continue to receive your assistance unchanged until the fair hearing decision is issued. If you need help in the fair hearing, contact one of the following community legal services: Legal Aid Society at 232-4090 or Monroe County Legal Assistance Corporation at                      325-2520.

SS-098 (5-74)

EXHIBIT "B"

20



In the Matter of the Appeal of

GAYLE MCQUOID

1 DECISION  
1 AFTER  
1 FAIR  
1 HEARING

from a determination by the Monroe County Department  
of Social Services (hereinafter called the agency)

A fair hearing was held at 36 Main Street West, Rochester, New York, on October 22, 1974, before Thomas J. Mahoney, Hearing Officer, at which the appellant, the appellant's representatives and representatives of the agency appeared. The Appeal is from a determination by the agency relating to the adequacy of a grant of aid to dependent children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant is a recipient of a grant of aid to dependent children for herself and six children. On August 16, 1974, the agency determined to reduce appellant's grant by removing her from the budget. The agency's determination was based on its decision that appellant is an alien residing in the United States unlawfully.

(2) Appellant is an alien. Her children are native born citizens.

(3) The United States Department of Justice, Immigration and Naturalization Service has determined that appellant is illegally in the United States. It does not contemplate enforcing her departure from the United States for humanitarian reasons relating to her six children.

(4) The agency sent a Notice to reduce appellant's grant on August 20, 1974, to be effective September 10, 1974. The appellant requested a fair hearing to review the agency's proposed action on August 19, 1974. The agency was notified by the State Department of Social Services that appellant's grant must be continued without change until a fair hearing decision is issued. The agency has continued assistance unchanged to the appellant through the date of this hearing, and the agency has stated that assistance will be continued until a fair hearing decision is issued.

Section 349.3 of the Regulations of the State Department of Social Services provides that an alien who is unlawfully residing in the United States is not eligible for public assistance. The credible evidence establishes that appellant is an alien illegally residing in the United States. The evidence further establishes that appellant had a fair hearing on this same issue on January 17, 1974, at which time the agency's determination to discontinue assistance to the appellant was reversed.

EXHIBIT "C"

However, that decision was properly made pursuant to provisions of law in effect at the time of the decision. The New York State Social Services Law was amended effective April 1, 1974, to provide that an alien who is unlawfully residing in the United States is not eligible for public assistance. Accordingly, the determination of the agency to reduce appellant's grant by removing her from the budget is proper.

DECISION: The determination of the agency is affirmed.

DATED: Albany, New York

Abe Lavine  
Abe Lavine  
COMMISSIONER

BY Carmen Shang  
Carmen Shang  
ASSISTANT COMMISSIONER



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually  
and on behalf of JAMES MCQUOID,  
NORMAN MCQUOID, THOMAS MCQUOID,  
DOUGLAS MCQUOID, MICHAEL MCQUOID, and  
ADELAINE MCQUOID, her minor children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the  
New York State Department of Social  
Services, and JAMES REED, as  
Commissioner of the Monroe County  
Department of Social Services,

Defendants.

NOTICE OF  
MOTION TO  
DISMISS

Civil Action  
No. 75-151

TO: Margaret M. Mahoney, Esq.  
Monroe County Legal Assistance Corp.  
Attorney for Plaintiffs  
80 Main Street West  
Rochester, New York 14611

PLEASE TAKE NOTICE that the undersigned will bring on  
the annexed Motion for hearing before this Court at the United  
States District Court House, 100 State Street, Rochester, New  
York, on the 28th day of April, 1975, at ten o'clock in the fore-  
noon of that day or as soon thereafter as counsel can be heard.

Dated: April 28, 1975

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendant Lavine  
By: *Paul O. Harrison*  
PAUL O. HARRISON  
Assistant Attorney General  
of counsel  
Office and Post Office Address  
300 Terminal Building  
65 Broad Street  
Rochester, New York 14614  
Telephone: 716-454-4540

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually  
and on behalf of JAMES MCQUOID,  
NORMAN MCQUOID, THOMAS MCQUOID,  
DOUGLAS MCQUOID, MICHAEL MCQUOID  
and ADELAINE MCQUOID, her minor  
children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the  
New York State Department of Social  
Services, and JAMES REED, as  
Commissioner of the Monroe County  
Department of Social Services,

Defendants.

MOTION TO  
DISMISS

Civil Action  
No. 75-151

The defendant, Abe Lavine, as Commissioner of the  
New York State Department of Social Services, by his attorney,  
Louis J. Lefkowitz, Attorney General of the State of New York,  
moves the Court as follows:

To dismiss the action on the ground that the  
complaint fails to state a claim upon which relief can be  
granted for the reason that the plaintiff, Gayle McQuoid Holley,  
is an alien illegally present in the United States (as shown  
by Exhibit "A" in her complaint herein), and that consequently  
she has no standing to demand, or qualification for, and no  
entitlement to benefits for herself under the Social Security  
laws of the United States.

Dated: April 28, 1975

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Defendant Lavine  
BY: *Paul O. Harrison*  
PAUL O. HARRISON  
Assistant Attorney General  
of Counsel  
Office and Post Office Address:  
300 Terminal Building  
65 Broad Street  
Rochester, New York 14614  
Telephone: (716) 454-4540



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually  
and on behalf of JAMES MCQUOID,  
NORMAN MCQUOID, THOMAS MCQUOID,  
DOUGLAS MCQUOID, MICHAEL MCQUOID, and  
ADELAINE MCQUOID, her minor children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the  
New York State Department of Social  
Services, and JAMES REED, as  
Commissioner of the Monroe County  
Department of Social Services,

Defendants.

AFFIDAVIT  
Opposing  
Preliminary  
Injunction

Civil Action  
No. 75-151

STATE OF NEW YORK )  
COUNTY OF MONROE ) SS.:  
CITY OF ROCHESTER )

PAUL O. HARRISON, being duly sworn, deposes and says,  
upon information and belief, as follows:

1. That your deponent is an Assistant Attorney General  
on the staff of Hon. Louis J. Lefkowitz, Attorney General of the  
State of New York, attorney of record for defendant Abe Lavine,  
Commissioner of the New York State Department of Social Services.

2. That your deponent makes this affidavit as counsel  
on behalf of defendant Lavine in opposition to the plaintiff's  
request for a preliminary injunction herein.

3. That as appears from the Complaint herein, the  
plaintiff is asking that a state statute and supporting regulation  
be declared violative of the Fourteenth Amendment to the Constitu-  
tion of the United States, and that the acts of state officers in  
pursuance of the duties imposed upon them by said statute and  
regulation be permanently enjoined; and that during the pendency  
of this action for permanent injunction, that such acts of the  
state officers be preliminarily enjoined.

4. That upon the foregoing, and by reason of 28 U.S.C.  
§2281 a single-judge District Court is without jurisdiction to  
grant either the interlocutory or the permanent injunction prayed  
for.

WHEREFORE, this Court should deny the plaintiff's  
request for injunctive relief.

*Paul O. Harrison*  
PAUL O. HARRISON

Sworn to before me this  
28th day of April, 1975.

*Linda J. Sharpe*

LINDA J. SHARPE  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MC QUOID HOLLEY, INDIVIDUALLY, AND  
ON BEHALF OF JAMES MC QUOID, NORMAN  
MC QUOID, THOMAS MC QUOID, DOUGLAS  
MC QUOID, MICHAEL MC QUOID, AND ADELAINE  
MC QUOID, HER MINOR CHILDREN,

PALINTIFFS,

CIVIL ACTION #75-15.

NOTICE OF MOTION  
TO DISMISS

-AGAINST-

ABE LAVINE, AS COMMISSIONER OF THE NEW  
YORK STATE DEPARTMENT OF SOCIAL SERVICES,  
AND JAMES REED, AS COMMISSIONER OF THE  
MONROE COUNTY DEPARTMENT OF SOCIAL  
SERVICES,

DEFENDANTS,

TO: MARGARET M. MAHONEY, ESQ.  
K. WADE EATON, ESQ.  
ATTORNEYS FOR THE PLAINTIFF,  
80 WEST MAIN STREET  
ROCHESTER, NEW YORK 14614

PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL BRING ON  
THE ANNEXED MOTION FOR HEARING BEFORE THIS COURT AT THE UNITED  
STATES DISTRICT COURT HOUSE, AT 100 STATE STREET, IN THE CITY OF  
ROCHESTER, COUNTY OF MONROE, STATE OF NEW YORK, ON THE 28TH DAY  
OF APRIL, 1975, AT TEN O'CLOCK IN THE FORENOON OF THAT DAY, OR AS  
SOON THEREAFTER AS COUNSEL CAN BE HEARD.

DATED: APRIL 26, 1975.

CHARLES G. PORRECA, ESQ.  
SOCIAL SERVICES COUNSEL,  
AS ATTORNEY FOR DEFENDANT JAMES  
REED, COMMISSIONER OF THE SOCIAL  
SERVICES DEPARTMENT OF THE COUNTY  
OF MONROE,  
OFFICE AND POST OFFICE ADDRESS,  
NO. 111 WESTFALL ROAD,  
ROCHESTER, NEW YORK 14620  
TELEPHONE: (716) 442 4000



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

GAYLE MCQUOID HOLLEY, INDIVIDUALLY AND ON  
BEHALF OF JAMES MCQUOID, NORMAN MCQUOID,  
THOMAS MCQUOID, DOUGLAS MCQUOID, MICHAEL  
MCQUOID AND ADELAINE MCQUOID, HER MINOR  
CHILDREN,

PLAINTIFFS,

-AGAINST-

ABE LAVINE, AS COMMISSIONER OF THE NEW  
YORK STATE DEPARTMENT OF SOCIAL SERVICES,  
AND JAMES REED, AS COMMISSIONER OF THE  
MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES,

DEFENDANTS,

---

CIVIL ACTION  
#75-151

MOTION TO DISMISS

THE DEFENDANT, JAMES REED, AS COMMISSIONER OF THE  
MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES, BY HIS ATTORNEY,  
CHARLES G. PORRECA, ESQ., MOVES THIS COURT AS FOLLOWS:

1. THAT THE ACTION OF THE WITHIN PLAINTIFF BE DIS-  
MISSED ON THE GROUND THAT THIS COURT LACKS JURISDICTION OVER THE  
SUBJECT MATTER; AND THAT THERE IS NO FEDERAL QUESTION SUBJECT  
MATTER JURISDICTION.

2. THAT THE ACTION OF THE WITHIN PLAINTIFF BE DIS-  
MISSED ON THE GROUND THAT THE COMPLAINT FAILS TO STATE A CLAIM  
UPON WHICH RELIEF CAN BE GRANTED.

3. THAT THIS COURT DENY THE PLAINTIFF'S APPLICATION FOR  
DAMAGES, SINCE SUCH ALLEGED DAMAGES WOULD HAVE TO BE PAID FROM THE  
PUBLIC FUNDS IN THE STATE TREASURY.

4. THAT THIS COURT DENY THE PLAINTIFF'S APPLICATION FOR  
ATTORNEY'S FEES SINCE THE PAYMENT BY THE STATE OF ATTORNEYS' FEES  
IS BARRED BY THE ELEVENTH AMENDMENT TO THE UNITED STATES  
CONSTITUTION.

5. THAT THIS COURT DENY THE PLAINTIFF'S APPLICATION  
FOR THE CONVENING OF A THREE-JUDGE COURT ON THE GROUND THAT THE  
PLEADINGS OF THE PLAINTIFF FAIL TO MAKE OUT A SUBSTANTIAL CON-  
STITUTIONAL CLAIM.

DATED: APRIL 26, 1975

CHARLES G. PORRECA, ESQ.  
SOCIAL SERVICES COUNSEL,  
AS ATTORNEY FOR DEFENDANT, JAMES  
REED, COMMISSIONER OF THE SOCIAL  
SERVICES DEPARTMENT OF THE  
COUNTY OF MONROE.

OFFICE AND POST OFFICE ADDRESS,  
NO. 111 WESTFALL ROAD,  
ROCHESTER, NEW YORK 14620  
TELEPHONE: (716) 244-0140



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, INDIVIDUALLY AND ON  
BEHALF OF JAMES MCQUOID, NORMAN MC QUOID,  
THOMAS MCQUOID, DOUGLAS MCQUOID, MICHAEL  
MCQUOID, AND ADELAINE MCQUOID, HER MINOR  
CHILDREN,

PLAINTIFFS,

CIVIL ACTION  
#75-151

-AGAINST-

AFFIDAVIT

ABE LAVINE, AS COMMISSIONER OF THE NEW  
YORK STATE DEPARTMENT OF SOCIAL SERVICES,  
AND JAMES REED, AS COMMISSIONER OF THE  
MONROE COUNTY DEPARTMENT OF SOCIAL  
SERVICES,

DEFENDANTS,

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss:  
CITY OF ROCHESTER )

CHARLES G. PORRECA, BEING DULY SWORN, DEPOSES AND SAYS:

1. DEPONENT IS A SOCIAL SERVICES COUNSEL FOR THE MONROE  
COUNTY DEPARTMENT OF SOCIAL SERVICES, AND IS LICENSED TO PRACTICE  
LAW IN THE STATE OF NEW YORK, AND IN THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF NEW YORK.

2. DEPONENT, IN THIS PROCEEDING, IS ATTORNEY FOR THE DE-  
FENDANT, JAMES REED, THE COMMISSIONER OF SOCIAL SERVICES FOR THE  
SOCIAL SERVICES DISTRICT OF THE COUNTY OF MONROE, WITH OFFICES  
LOCATED AT NO. 111 WESTFALL-ROAD, IN THE CITY OF ROCHESTER, NEW  
YORK.

3. THAT DEPONENT IS FAMILIAR WITH THE FACTS OF THE WITH-  
IN ACTION, AND SUBMITS THIS AFFIDAVIT IN SUPPORT OF THE MOTION  
OF DEFENDANT JAMES REED, IN HIS CAPACITY AS COMMISSIONER OF THE  
MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES, TO DISMISS THE  
ACTION BROUGHT HEREIN BY THE ABOVE-NAMED PLAINTIFFS.

4. THAT BY TRANSMITTAL NUMBER 74-ADM-110, AN ADMINISTRATIVE  
LETTER DATED JULY 15, 1974, EFFECTIVE ON AUGUST 1, 1974, WAS SENT

TO THE SOCIAL SERVICES COMMISSIONERS OF THE STATE OF NEW YORK,  
STATING IN SUBSTANCE THE FOLLOWING:

"....EFFECTIVE JANUARY 2, 1974, FEDERAL REGULATIONS REQUIRE UNITED STATES CITIZENSHIP OR STATUS AS AN ALIEN LAWFULLY ADMITTED FOR PERMANENT RESIDENCE OR OTHERWISE PERMANENTLY RESIDING IN THE UNITED STATES, AS A CONDITION OF ELIGIBILITY FOR FEDERAL FINANCIAL PARTICIPATION IN AID TO DEPENDENT CHILDREN, MEDICAL ASSISTANCE AND SOCIAL SERVICES. THE SOCIAL SERVICES LAW (NEW YORK STATE) WAS AMENDED BY CHAPTER 811 OF THE LAWS OF 1974, EFFECTIVE JUNE 7, 1974 TO PERMIT IMPLEMENTATION OF THE FEDERAL REQUIREMENT AND TO EXTEND THE REQUIREMENT TO HOME RELIEF....."

THE ADMINISTRATIVE LETTER CONTINUED:

"...THE DEPARTMENT'S POLICY CONCERNING ILLEGAL ALIENS IS CONTAINED IN A NEW SECTION 349.3 OF CHAPTER 11 OF TITLE 18 N.Y.C.R.R.. BASIC PROVISIONS INCLUDE:

.....AN ALIEN WHO IS UNLAWFULLY RESIDING IN THE UNITED STATES, OR FAILS TO FURNISH EVIDENCE THAT HE IS LAWFULLY RESIDING IN THE UNITED STATES, IS NOT ELIGIBLE FOR AID TO DEPENDENT CHILDREN, HOME RELIEF OR MEDICAL ASSISTANCE, AND FEDERALLY PARTICIPATING SOCIAL SERVICES, EXCEPT THAT HOME RELIEF AND MEDICAL ASSISTANCE SHALL BE GRANTED FOR A TEMPORARY PERIOD OF THIRTY DAYS IN ORDER TO ALLOWTIME FOR THE REFERRAL OF THE CASE TO THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, OR THE NEAREST CONSULATE TO TAKE APPROPRIATE ACTIONOR FURNISH ASSISTANCE....."

5. THEREAFTER, IN COMPLIANCE WITH THE THE ABOVE DIRECTIVE, AND THE NEWLY ENACTED REGULATION ( TITLE 18 N.Y.C.R.R., SECTION 349.3 ), AND THE AMENDMENT TO THE SOCIAL SERVICES LAW IN ACCORDANCE WITH THE NEWLY ENACTED LEGISLATION, AND (NEW YORK STATE SOCIAL SERVICES LAW, SECT. 131-k(1)), THE MONROE COUNTY SOCIAL SERVICES DEPARTMENT REDUCED THE GRANT OF THE ABOVE-NAMED PLAINTIFFS; THE PLAINTIFFS WERE DULY NOTIFIED AS REQUIRED BY LAW AS TO THE REASONS FOR THE REDUCTION AND THE DELETION FROM THE GRANT OF THE PLAINTIFF, GAYLE MCQUOID HOLLEY.

6. THE SAID PLAINTIFF WAS TAKEN OFF THE GRANT BECAUSE



SHE IS AN ALIEN, ILLEGALLY IN THE UNITED STATES.

7. THEREAFTER, SAID PLAINTIFF SOUGHT AND RECEIVED A HEARING BEFORE THE NEW YORK STATE COMMISSIONER OF SOCIAL SERVICES RELATIVE TO THE DELETION FROM THE GRANT, ON OCTOBER 22, 1974, AND BY DECISION OF THE STATE COMMISSIONER, DATED DECEMBER 19, 1974 AFFIRMED THE ACTION OF THE DEFENDANT, JAMES REED, CITING THE SECTION 349.3 OF TITLE 18 N.Y.C.R.R., AND THE AMENDMENT TO THE NEW YORK STATE SOCIAL SERVICES LAW ( SSL, SECT. 131-K(1), AND FURTHER CITING THAT THE UNITED STATES DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE HAS DETERMINED THAT SAID PLAINTIFF IS ILLEGALLY IN THE UNITED STATES.. (SEE: LETTER DATED OCTOBER 16, 1974 FROM THE UNITED STATES DEPARTMENT OF JUSTICE, AND NEW YORK STATE 'FAIR HEARING' DECISION OF DECEMBER 19, 1974, ATTACHED HERETO).

8. THAT, UPON INFORMATION AND BELIEF, SINCE THE DEFENDANT JAMES REED ACTED AS HE WAS LAWFULLY BOUND TO ACT ( SEE: 18 N.Y.C. R.R. SECT. 349.3 AND SSL, SECT. 131-K(1), IN THIS CASE, AND SINCE THE NEW YORK STATE'S NEWLY ENACTED REGULATION AND STATUTE WAS IMPLEMENTED PURSUANT TO THE NEWLY ENACTED FEDERAL REGULATIONS, THIS PLAINTIFF FAILS TO STATE A CAUSE OF ACTION AGAINST THE SAID DEFENDANT JAMES REED; THAT SAID PLAINTIFF HAS FAILED TO NAME THE FEDERAL AGENCY (DEPARTMENT OF HEALTH, EDUCATION AND WELFARE) AS A PARTY IN THIS SUIT. INSTEAD, THE PLAINTIFF SEEKS TO HAVE THE NEW YORK STATE REGULATIONS AND STATUTE DECLARED UNCONSTITUTIONAL WITHOUT PRAYING FOR AN ORDER FROM THE COURT AGAINST THE FEDERAL AGENCY, ALTHOUGH THE NEW YORK STATE STATUTE AND REGULATION WERE IMPLEMENTED BECAUSE OF THE FEDERAL REGULATION.

9. THAT IN ACCORDANCE WITH THE IMPLEMENTATION OF THE FEDERAL REGULATIONS AND THE NEWLY-ENACTED STATE REGULATIONS AND STATUTE, THE ADMINISTRATIVE LETTER ABOVE REFERRED TO SETS FORTH 'WORK FLOW' PROCEDURES TO IMPLEMENT THE PROGRAM, WHICH STATE AT PAGE 4 THEREOF WHAT IS REQUIRED IN ORDER FOR A PERSON TO CLAIM THAT HE OR SHE IS IN THE UNITED STATES 'UNDER COLOR OF LAW' NAMELY:

"....EVIDENCE OF PERMANENT RESIDENCE IN THE UNITED STATES UNDER COLOR OF LAW:

- I. INS FORM I-94 (ARRIVAL) (DEPARTURE RECORD) ENDORSED 'REFUGEE-CONDITIONAL ENTRY'
- II. INS FORM I-94 ENDORSED TO SHOW BEARER HAS BEEN PAROLED FOR AN INDEFINITE PERIOD PURSUANT TO SECTION 212(D)(5) OF THE IMMIGRATION AND NATURALIZATION ACT....."

10. AT THE 'FAIR HEARING' WHICH TOOK PLACE ON THE 22ND DAY OF OCTOBER 1974, UPON INFORMATION AND BELIEF, THIS PLAINTIFF UPON BEING ASKED BY A REPRESENTATIVE OF THE MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES (THE PLAINTIFF WAS REPRESENTED BY AN ATTORNEY AT THE HEARING), ADMITTED THAT SHE HAS NO SUCH NECESSARY FORM OF ANY KIND AS REQUIRED AS STATED ABOVE, TO CLAIM THAT SHE IS IN THE UNITED STATES UNDER 'COLOR OF LAW'. INDEED, THE ATTACHED LETTER DATED OCTOBER 16, 1974, FROM THE DEPARTMENT OF JUSTICE (IMMIGRATION AND NATURALIZATION SERVICE) SPECIFICALLY STATES THAT SHE IS ILLEGALLY IN THE UNITED STATES AND THAT DEPORTATION PROCEEDINGS HAVE NOT BEEN INSTITUTED AGAINST HER 'FOR HUMANITARIAN REASONS' SINCE SHE HAS SIX (6) UNITED STATES CITIZEN CHILDREN.

11. THAT UPON INFORMATION AND BELIEF, SHE IS IN THE UNITED STATES UNDER NO 'COLOR OF LAW', BUT RATHER WITH NO STATUS WHATSOEVER. DEPONENT SUBMITS TO THE COURT THAT THE PRESENT STATUS OF THIS PLAINTIFF IS THE VERY TYPE PERSON-STATUS THAT THE FEDERAL



AND STATE REGULATIONS AND STATUTES ARE DIRECTED AT - THE VERY REASON FOR THIS LEGISLATION (NEW YORK STATE) AND FEDERAL REGULATIONS.

12. THAT SECTION 402(A)(10) OF THE SOCIAL SECURITY ACT, 42 U.S.C., SECTION 602(A)(10) EXPRESSLY INCLUDES THE WORD 'ELIGIBLE' IN ITS WORDING:

"...A STATE PLAN FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN MUS...PROVIDE...THAT AID TO FAMILIES WITH DEPENDENT CHILDREN SHALL BE FURNISHED WITH REASONABLE PROMPTNESS TO ALL ELIGIBLE INDIVIDUALS....."

(UNDERLINES FURNISHED)

13. THAT A WELFARE REGULATION CAN CONDITION THE GRANTING OF WELFARE BENEFITS, AND ALLOCATE WITH CONSIDERABLE LATITUDE THE A.F.D.C. RESOURCES, HAS BEEN DETERMINED BY THE UNITED STATES SUPREME COURT (SEE: DANDRIDGE VS. WILLIAMS, 397 U.S. 471).

14. THAT THE PLAINTIFF HERE SEES A PRELIMINARY INJUNCTION, UPON INFORMATION AND BELIEF, WITHOUT SETTING FORTH IN HER PLEADINGS THE LEGAL NEED AS DEFINED BY THE FEDERAL DECISIONAL LAW (SEE: PRIDE VS. COMMUNITY SCHOOL OF BROOKLYN, 488 F2d 321, 2ND CIRCUIT - DECIDED ON 11/21/73).

15. THAT TO GRANT THE APPLICATION OF THIS PLAINTIFF FOR A PRELIMINARY INJUNCTION BASED ON THE CIRCUMSTANCES HEREIN, AND BASED ON THE PLEADINGS SUBMITTED BY THIS PLAINTIFF, COULD WORK IRREPARABLE HARM AND FINANCIAL LOSS TO DEFENDANT JAMES REED, BECAUSE IF SAID DEFENDANT IS SUCCESSFUL IN OPPOSING THE PLAINTIFF'S APPLICATION, THERE WOULD BE NO WAY FOR THE MONROE COUNTY DEPARTMENT TO RECOUP THE OVERAGE PAYMENT OF PUBLIC ASSISTANCE, SINCE BY PLAINTIFF'S OWN ADMISSION IN HER AFFIDAVIT VERIFIED ON APRIL 9, 1975 (SEE PAR. '4' ON PAGE 1 OF HER AFFIDAVIT) SAID PLAINTIFF HAS NO ASSETS. ON THE OTHER HAND, IN THE EVENT OF SUCCESS ON THE PART

OF THE PLAINTIFF HEREIN, SHE WOULD EXPECT RE-PAYMENT OF HER WELFARE BENEFITS.

16. THAT UPON INFORMATION AND BELIEF, THERE IS NO FEDERAL-QUESTION SUBJECT-MATTER JURISDICTION, BASED UPON THE PLEADINGS SUBMITTED BY THE PLAINTIFF HEREIN, AND NO COLORABLE CONSTITUTIONAL ISSUE TO BE RESOLVED, SINCE SHE FAILS TO SHOW THAT THE BASIS OF CLASSIFICATION RESULTING FROM THE REGULATIONS AND STATUTOR LAW UPON WHICH DEFENDANT JAMES REED HAS ACTED, IS UNREASONABLE.

17. AS PART OF HER COMPLAINT, THE PLAINTIFF IS PROCEED- UNDER THE CIVIL RIGHTS ACT, SECTION 1983, EVEN THOUGH, UPON INFORMATION AND BELIEF, THAT STATUTE DOES NOT GIVE JURISDICTION OVER THE 'MONROE COUNTY SOCIAL SERVICES DEPARTMENT', SINCE THE SAID DEPARTMENT IS NOT A 'PERSON' WITHIN THE LANGUAGE OF THE ACT.

18. THAT AS PART OF HER PRAYER FOR RELIEF IN HER PLEADINGS, PLAINTIFF SEEKS MONEY DAMAGES FROM DEFENDANT JAMES REED; THAT UPON INFORMATION AND BELIEF, THE FEDERAL COURTS LACK THE POWER TO ORDER 'RETRO-ACTIVE' PAYMENTS TO BE MADE TO A WELFARE RECIPIENT SINCE ANY SUCH PAYMENTS WOULD HAVE TO BE MADE FROM PUBLIC FUNDS OUT OF THE STATE TREASURY, AND SUCH PAYMENT IS BARRED BY THE 11TH AMENDMENT TO THE FEDERAL CONSTITUTION, WHERE THE STATE DOES NOT 'CONSENT' TO BE SUED. (SEE: EDELMAN VS. JORDAN, \_\_\_\_ U.S. \_\_\_\_), DECIDED IN MARCH 1974, AND ALSO ROTHSTEIN VS. WYMAN, 467 F2D 226 - 2ND CIRCUIT).

WHEREFORE, THE DEFENDANT, JAMES REED, AS COMMISSIONER OF THE MONROE COUNTY SOCIAL SERVICES DEPARTMENT, RESPECTFULLY REQUESTS THAT THIS COURT DISMISS THE ACTION OF THE PLAINTIFF, AND DENY THE APPLICATION OF THE PLAINTIFF, ON THE GROUNDS SET FORTH



IN DEFENDANT JAMES REED'S MOTION TO DISMISS AT PAGE '1' HEREIN.

Charles A. Rosen

SWORN TO BEFORE ME THIS

28<sup>th</sup> DAY OF APRIL, 1975.

Edward C. D'Amico

NOTARY PUBLIC

State of New York      Edward C. D'Amico  
County of Monroe  
My Commission Expires March 31, 1977

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE  
UNITED STATES COURT HOUSE  
Buffalo, New York - 14202

PLEASE REFER TO THIS FILE NUMBER

A10 370 151(DD)

October 16, 1974

Phone: 842-3603

Lawrence F. Tranello, LLB  
Chief Legal Counsel  
County of Monroe  
Department of Social Services  
111 Westfall Road  
Rochester, N.Y. 14620

Dear Mr. Tranello:

Reference is made to your letter of September 18, 1974, concerning Gayle McQuoid, alien registration number A10 370 151.

The records of this Service indicate Mrs. McQuoid, formerly Miss Dianne Gayle Rivers, was born in Smith Falls, Ontario, Canada, on August 22, 1942. She first entered the United States as a nonimmigrant student on June 30, 1953. Her last entry was apparently on January 2, 1969, at which time she falsely claimed to be a returning lawful permanent resident of the United States.

On September 6, 1959, she married Norman Stanley McQuoid. Five children, natives and citizens of the United States, were born of this marriage. She has allegedly been separated from Mr. McQuoid since August of 1966. It is my understanding that subsequently she gave birth to a sixth child, father not known.

Although Mrs. McQuoid is illegally in the United States, deportation proceedings have not been instituted against her for humanitarian reasons relating to her six United States citizen children. So long as she is receiving public assistance, she is ineligible for an immigrant visa, for which she might otherwise be eligible.

This Service does not contemplate enforcing her departure from the United States at this time. Should the dependency of the children change, her case would be reviewed for possible action consistent with circumstances then existing.

If I may be of further assistance, please advise.

Very truly yours,

*Glenn A. Bertness*

GLENN A. BERTNESS  
District Director



STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES  
1450 WESTERN AVENUE  
ALBANY, NEW YORK 12203

ADE LAVINE  
COMMISSIONER

Effective: August 1, 1974

ADMINISTRATIVE LETTER

TRANSMITTAL NO.: 74 ADM-110

DATE: July 15, 1974

TO: Commissioners of Social Services

SUBJECT: Citizenship and Alien status as a condition of eligibility for  
Aid to Dependent Children, Home Relief, and Medical Assistance

Suggested  
DISTRIBUTION: All Public Assistance Staff  
All Medical Assistance Staff

I. Introduction

Effective January 2, 1974 Federal Regulations require United States citizenship or status as an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States as a condition of eligibility for Federal financial participation in Aid to Dependent Children, Medical Assistance and social services. The Social Service Law was amended by Chapter 811 of the Laws of 1974, effective June 7, 1974 to permit implementation of the Federal requirement and to extend the requirement to Home Relief..

II. Policy

The Department's policy concerning illegal aliens is contained in a new Section 349.3 of Chapter II of Title 18 NYCRR. Basic provisions include:

~~\* An alien who is unlawfully residing in the United States, or fails to furnish evidence that he is lawfully residing in the United States is not eligible for Aid to Dependent Children, Home Relief, Medical Assistance and Federally participating social services except that Home Relief and Medical Assistance shall be granted for a temporary period of thirty days in order to allow time for the referral of the case to the United States Immigration and Naturalization Service, or the nearest consulate to take appropriate action or furnish assistance.~~

III. Program Implementation

A. Determination of Eligibility

Work flow procedures for use in determining citizenship and alien status are contained in Section IV below.

FILING REFERENCE  
Spt. Reqs.  
349.3, 351.1, 351.2  
351.20

B. Example

An ADC application or case:

Mother - has been determined ineligible by the agency in accordance with the outlined procedure because she is not a citizen or an alien legally residing in the United States.

Children - all born in the United States and by reason thereof are United States citizens.

If otherwise eligible, the mother shall be granted HR for thirty days and the children granted ADC. At the end of thirty days, HR for the mother will be discontinued but the children continue to receive ADC.

✓ C. Determination of the thirty-day period

Failure of the applicant/recipient to provide documentation to prove citizenship or legal alien status shall result in a finding of ineligibility by the agency and the thirty-day period shall start as of the date such a decision is made. Immediate referral shall be made to the Immigration and Naturalization Service. If, as a result of the referral, INS indicates within the thirty-day period that the individual has legal status, the case, if otherwise eligible, shall be continued in the appropriate category. In all other cases, assistance will be discontinued at the end of thirty days.

D. Claiming Procedure

Although these cases are not subject to Federal reimbursement, expenditures made on their behalf shall be claimed under the appropriate program for a temporary period not to exceed thirty days in accordance with normal claiming procedures. If Federal reimbursement has been claimed since January 2, 1974 any adjustment which may be required as a result of the retroactive date shall be handled within the self-audit process in order to reverse any Federal and State aid claimed improperly.

IV. Work flow Procedures for Determining Citizenship and Alien Status and Granting Assistance



Function

Action

Citizenship/Alien Status  
Review for Eligibility

Public Assistance  
Application

Note: Form DSS-1994 has been reviewed as of March 1974 but is not yet available.

Medical Assistance  
Application

Note: Carefully compare signature and photograph for match with Form DSS-1994 or Form DSS-515.

Public Assistance  
Application

Note: Attachment 1 shows Section X of the 3/74 revision of DSS-1994.

1. Enter place of birth for each individual applying for assistance:

- a. See section of Form DSS-1994, Application/Certification for Public Assistance:

- i. Version dated 3/74 - Section A.

- ii. Version dated 12/72 - Section C.

- b. Form DSS-515, Application for Medical Assistance. Enter the place of birth of each individual applying for Medical Assistance in the Documentation Required shaded area of Section B.

2. Verify the citizenship of each person born in the United States. The following is adequate verification:

- a. A certified copy of a public record of birth or a religious record of birth or baptism evidencing birth in the United States.

- b. A United States passport.

3. For each person not born in the United States, record immigration/naturalization information:

- a. On the 3/74 version of Form DSS-1994, complete Section X.

- b. On the 12/72 version of Form DSS-1994, complete Section X, and in addition enter items (i) and (ii) under Section c below.

Medical Assistance

Application

Note: Form DSS-515 is being revised to incorporate this information.

c. On the Form DSS-515, enter in space available on page 10 the following:

- i. Port of Entry
- ii. Status with Documentary Evidence
  - (a) Naturalized Citizen Certificate No.
  - (b) Permanent Resident Alien Registration No.
  - (c) Temporary Non-Immigrant Alien Immigrant File No.
  - (d) Other  
Specify Documentation

4. Verify citizenship/alien status of each person not born in the United States.

a. Evidence of U.S. citizenship

- i. Certificate of citizenship.
- ii. Certificate of naturalization.
- iii. United States passport.
- iv. Identification card for use of Resident Citizen in the United States (INS Form I-179 or INS Form I-197).

b. Evidence of permanent residence in the United States under color of law

- i. INS Form I-94 (arrival-Departure Record) endorsed REFUGEE-CONDITIONAL ENTRY.
- ii. INS Form I-94 endorsed to show bearer has been paroled for an indefinite period pursuant to Section 212 (d) (5) of the Immigration and Naturalization Act.

c. Evidence of lawful admission for permanent residence in the United States

- i. Alien Registration Receipt Card (INS Form I-151).
- ii. A re-entry permit.

Note: The INS booklet Documentary Requirements for Aliens in the U.S. (Attachment 2) provides examples of typical documents carried by aliens. Copies of this booklet are available at this address:

United States Department of Justice  
Immigration and Naturalization Service  
20 West Broadway  
New York, New York 10007



5. If any person:

- a. is unable to verify citizenship/alien status, or
- b. present documentation of questionable validity,

Note: Attachment 3 is a copy of Form DSS-2361 and instructions for its use.

Complete Form DSS-2361, Verification of Alien Status, and mail promptly to INS.

The following Social Services Districts shall mail the DSS-2361 to INS in New York City:

New York City and

Counties of:	Broome	Rockland
	Dutchess	Suffolk
	Nassau	Sullivan
	Orange	Ulster
	Putnam	Westchester

All other Social Services Districts shall mail the DSS-2361 to INS in Buffalo, NY.

The appropriate address for INS has been preprinted on the DSS-2361.

Granting of Assistance

6. For any otherwise eligible applicant or recipient who is unable to provide acceptable evidence that he is not an alien illegally residing in the United States


Note: MA is granted only in accordance with Department Regulation 360.11 (a)(5)

- a. Grant Home Relief and/or Medical Assistance for 30 days.
- b. Refer to INS using Form DSS-2361.

7. If INS verification indicates that the citizenship/alien status is legal, provide assistance in the appropriate category.

7. Effective Date

For all new applications and recertifications on and after August 1, 1974.

  
Deputy Commissioner

In the Matter of the Appeal of

GAYLE MCCOY

DECISION  
AFTER  
FAIR  
HEARING

from a determination by the Monroe County Department  
of Social Services (hereinafter called the agency)

A fair hearing was held at 35 Main Street West, Rochester, New York, on October 22, 1974, before Thomas J. Mahoney, Hearing Officer, at which the appellant, the appellant's representatives and representatives of the agency appeared. The Appeal is from a determination by the agency relating to the adequacy of a grant of aid to dependent children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant is a recipient of a grant of aid to dependent children for herself and six children. On August 16, 1974, the agency determined to reduce appellant's grant by removing her from the budget. The agency's determination was based on its decision that appellant is an alien residing in the United States unlawfully.

(2) Appellant is an alien. Her children are native born citizens.

(3) The United States Department of Justice, Immigration and Naturalization Service has determined that appellant is illegally in the United States. It does not contemplate enforcing her departure from the United States for humanitarian reasons relating to her six children.

(4) The agency sent a Notice to Reduce appellant's grant on August 20, 1974, to be effective September 10, 1974. The appellant requested a fair hearing to review the agency's proposed action on August 19, 1974. The agency was notified by the State Department of Social Services that appellant's grant must be continued without charge until a fair hearing decision is issued. The agency has continued assistance unchanged to the appellant through the date of this hearing, and the agency has stated that assistance will be continued until a fair hearing decision is issued.

Section 249.3 of the Regulations of the State Department of Social Services provides that an alien who is unlawfully residing in the United States is not eligible for public assistance. The credible evidence establishes that appellant is an alien illegally residing in the United States. The evidence further establishes that appellant had a fair hearing on this same issue on January 17, 1974, at which time the agency's determination to discontinue assistance to the appellant was reversed.

EXHIBIT "C"



DALE MCLOID

However, that decision was properly made pursuant to provisions of law in effect at the time of the decision. The New York State Social Services Law was amended effective April 1, 1974, to provide that an alien who is unlawfully residing in the United States is not eligible for public assistance. Accordingly, the determination of the agency to reduce appellant's grant by removing her from the budget is proper.

DECISION: The determination of the agency is affirmed.

DATED: Albany, New York

Abe Levine  
Abe Levine  
COMMISSIONER

BY Carmen Shang  
Carmen Shang  
ASSISTANT COMMISSIONER

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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GAYLE MCQUOID HOLLEY, individually and on behalf of JAMES MCQUOID, NORMAN MCQUOID, THOMAS MCQUOID, DOUGLAS MCQUOID, MICHAEL MCQUOID, and ADELAINE MCQUOID, her minor children,

Plaintiffs

- VS -

CIVIL 75-151

ABE LAVINE, as Commissioner of the New York State Department of Social Services, and JAMES REED, as Commissioner of the Monroe County Department of Social Services,

Defendants

---

Margaret M. Mahoney & K. Wade Eaton  
80 West Main Street  
Rochester, N.Y. 14614  
Attorneys for plaintiffs

Paul O. Harrison  
Assistant Attorney General of New York  
300 Terminal Building  
Rochester, N.Y. 14614  
Attorney for defendant Lavine

Charles G. Porreca  
111 Westfall Road  
Rochester, N.Y. 14620  
Attorney for defendant Reed

The complaint herein was filed April 17, 1975.

The action challenges the validity of Section 13LK of the New York Social Services Law which provides that aliens unlawfully residing in the United States are ineligible for public assistance benefits under the federally funded program of Aid to Dependent Children, and the regulations of the



New York State Department of Social Services promulgated thereunder (Section 349.3 of Title 18 of the New York Code of Rules and Regulations). The complaint alleges that jurisdiction is conferred by 28 U.S.C. 1343 (Civil Rights Act) and by 28 U.S.C. 1331, the amount in controversy exceeding \$10,000.00 and arising under the constitution and laws of the United States.

On April 17, 1975, simultaneous with the filing of the complaint, this court directed the defendants to show cause why an order should not be issued granting a preliminary injunction requiring the defendant Reed to restore the grant of aid to dependent children for the plaintiff's family household to the level to which they would be entitled but for the removal of the plaintiff Gayle McQuoid Holley from the grant pursuant to the December 19, 1974 administrative decision of the defendant Lavine, pending a final disposition of this action, and why this court should not convene a three judge court. The defendant Reed filed a notice of motion and a motion to dismiss with supporting papers. The motions were heard before this court on oral argument and were submitted on written memoranda.

The suit is an attack on a state statute and state regulation, not on action taken under the statute and regulation. The complaint is against the state and county of

Monroe, not against the Commissioner of the New York State Department of Social Services as an individual, nor against the Commissioner of the Monroe County Department of Social Services as an individual. Neither the state commissioner nor the county commissioner are within the scope of Section 1983. *Rosado vs. Wyman*, 414 F.2d. 170, 173.

The complaint asserts no substantial claim of unconstitutionality. There is no showing that the amount in controversy exceeds \$10,000.00, exclusive of interest and costs.

ORDERED that the action is dismissed for lack of jurisdiction over the subject matter and because the complaint fails to state a claim upon which relief may be granted.

HAROLD P. BURKE  
United States District Judge

July 30, 1975.



## United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75-151

GAYLE MCQUOID HOLLEY, individually and on  
behalf of JAMES MCQUOID, NORMAN MCQUOID, et al.

vs.

JUDGMENT

ABE LAVINE, as Commissioner of the New York  
State Department of Social Services, and  
JAMES REED, as Commissioner of the Monroe County  
Department of Social Services

This action came on for ~~XXXX~~ (hearing) before the Court, Honorable Harold P. Burke  
, United States District Judge, presiding, and the issues having been duly ~~XXX~~  
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the action is dismissed for lack of  
jurisdiction over the subject matter and because the complaint fails  
to state a claim upon which relief may be granted.

Dated at Buffalo, New York  
of July , 1975 .

, this 31st day

JOHN K. ADAMS  
Clerk of Court

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually  
and on behalf of JAMES MCQUOID,  
NORMAN MCQUOID, THOMAS MCQUOID,  
DOUGLAS MCQUOID, MICHAEL MCQUOID, and  
ADELINE MCQUOID, her minor children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the  
New York State Department of Social  
Services, and JAMES REED, as  
Commissioner of the Monroe County  
Department of Social Services,

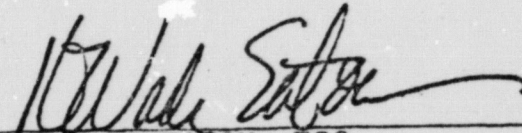
Defendants.

Civil No. 75-151

NOTICE OF APPEAL

Notice is hereby given that GAYLE MCQUOID HOLLEY,  
plaintiff herein, hereby appeals to the United States Court of  
Appeals for the Second Circuit from the Order of the Honorable  
Harold P. Burke, dated 30th day of July, 1975, and the judgment  
entered thereon the 31st day of July, 1975.

August 4, 1975

  
K. WADE EATON, ESQ.  
Greater Up-State Law Project  
Monroe County Legal Assistance  
Corporation  
80 West Main Street  
Rochester, New York 14614  
Tel: (716) 454-6500  
Attorney for Plaintiff



TO: JOHN K. ADAMS, Clerk  
United States District Court  
United States Courthouse  
Buffalo, New York 14202

LOUIS J. LEFKOWITZ  
Attorney General of the State  
of New York  
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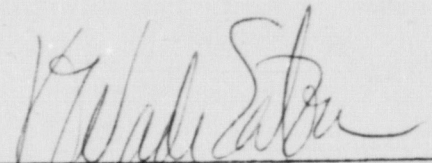
CHARLES G. PORRECA, Esq.  
Attorney for Defendant Reed  
111 Westfall Road  
Rochester, New York 14620

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 1975,  
I served the foregoing Appendix on Appeal upon counsel for the  
appellees, by causing copies to be mailed, postage prepaid, to:

Louis J. Lefkowitz  
Paul C. Harrison  
Assistant Attorney General  
65 Broad Street  
Rochester, New York 14614

Charles G. Porreca, Esq.  
111 Westfall Road  
Rochester, New York 14620

  
K. WADE EATON

Dated: August 22, 1975



